उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 998 OF 2001

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANT Lakhan, S/o Birjhu, aged 50 years, Occupation Agriculture, R/o Deepadihkala, Police Station Shankargarh, District Sarguja, Ambikapur (C.G.)

Versus

RESPONDENT : State of Chhattisgarh, Through The Police Station – Kusumi, District Sarguja, Ambikapur (C.G.)

Present

Mr. Ratindra Mishra, counsel for the accused/appellant.
Mr. D.K. Gwalre, G.A. for the State/respondent.

ORAL JUDGMENT
(28th June 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 9.10.2001 passed by III Additional Sessions Judge, Ambikapur in Sessions Trial No. 129/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

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(12)

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आदेश पत्रक (पूर्वानुबद्ध)

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2. Case of the prosecution, in brief, is that in the evening of 20th March 2000 Sunandan (since deceased) after consuming *Hadiya* (home made liquor) left for village Devsahra to consume more *Hadiya*. When he reached near Balarinala, of village Devsahra at about 11.00 in the night accused Lakhan attacked him with club of *Sarai* and stone and thereby he committed his murder. On 21.3.2000 Kulinda Ghurbigua lodged the Merg intimation (Ex.P/13) in the police station Kusmi regarding death of Sunandan whereupon Merg No. 13/2000 was registered. Based on that First Information Report (Ex.P/18) was registered. The investigating officer left for the scene of occurrence and after giving notice to the Panchas, he prepared inquest (Ex.P/6) on the body of deceased Sunandan. Dead body of Sunandan was sent for postmortem examination to Primary Health Center, Kusmi under Ex.P/14-A where Dr. T. Sai conducted postmortem and prepared the postmortem report (Ex.P/14) in which he opined that cause of death was coma and hemorrhage due to injuries and death was homicidal in nature. The accused while in police custody gave memorandum (Ex.P/7) regarding the place where he had thrown the weapons of offence i.e. stone and club, pursuant to which he got the stone and club seized under Ex.P/8. Site plan (Ex.P/9) was prepared by Halka Patwari. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur from where learned III Additional Sessions Judge, received the case on transfer for trial.

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3. Prosecution in order to establish the charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence, pleaded innocence and stated that he has been falsely implicated in the crime.

4. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

5. We have heard Mr. Ratindra Mishra, counsel appearing on behalf of the accused/appellant and Mr. D.K. Gwalre, G.A. for the State/respondent.

6. Having heard learned counsel for the parties we have perused the record. There is no direct evidence connecting the accused with the crime in question. The accused has been convicted merely on the basis of recovery of club and stone on his memorandum (Ex.P/7). From perusal of the F.S.L. report (Ex.P/21) it is evident that the club was stained with blood and as per serologists report it was human blood, but there is no report to the effect that the blood found on the club was of the group of the deceased. However, the seized stone was not sent for chemical examination. It appears that there was no blood on the stone. Merely on the basis of reports of F.S.L. and serologists the accused cannot be convicted for commission of the murder of Sunandan as there is no other ocular or circumstantial evidence against the accused/appellant connecting him with the crime in

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आदेश पत्रक (पूर्वानुबद्ध)

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question. In fact, the prosecution witnesses PW-1 Vidur and PW-2 Sonsai before whom the accused is said to have made extrajudicial confession, have turned hostile and they have not supported the prosecution case. Therefore, for the foregoing reasons, conviction of the accused/appellant under Section 302 of the IPC cannot be sustained.

7. In the result, the appeal succeeds. Conviction of accused/appellant under Section 302 of the IPC and sentence imposed thereon, are set aside and he is acquitted of the above charge. He is in detention since 23rd March 2000, thereby he is in jail for about 7 years 3 months, therefore, he is directed to be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge